

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #12	CCRB Case #: 201801532	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/23/2018 2:27 PM	Location of Incident: § 87(2)(b)	Precinct: 41	18 Mo. SOL 8/23/2019	EO SOL 8/23/2019	
Date/Time CV Reported Fri, 02/23/2018 3:05 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/23/2018 3:05 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Derwent Williams	01719	939693	041 PCT
2. POM Ahsan Zafar	03773	949822	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Derwent Williams	Abuse: Sergeant Derwent Williams stopped an individual.	§ 87(2)(b)
B.POM Ahsan Zafar	Abuse: Police Officer Ahsan Zafar stopped § 87(2)(b)	§ 87(2)(b)
C.SGT Derwent Williams	Abuse: Sergeant Derwent Williams frisked an individual.	§ 87(2)(b)
D.POM Ahsan Zafar	Abuse: Police Officer Ahsan Zafar frisked § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On February 23, 2018, § 87(2)(b) filed this complaint with the CCRB on behalf of her son, § 87(2)(b) § 87(2)(b) witnessed the incident.

At approximately 2:27 p.m. on February 23, 2018, § 87(2)(b) was standing outside of § 87(2)(b) in the Bronx when he was approached by an unidentified man who asked if he had a spare belt. As § 87(2)(b) began to speak to this male, Sergeant Derwent Williams and Police Officer Ahsan Zafar, of the 41st Precinct, got out of an unmarked police car and approached the two civilians. Sergeant Williams approached the unidentified man and placed a hand on his back (**Allegation A: Abuse of Authority: Stop:** § 87(2)(g)) while Police Officer Zafar approached § 87(2)(b) and grabbed his left arm (**Allegation B: Abuse of Authority: Stop:** § 87(2)(g)). Sergeant Williams then frisked the unidentified man (**Allegation C: Abuse of Authority: Frisk:** § 87(2)(g)) while Police Officer Zafar frisked § 87(2)(b) (**Allegation D: Abuse of Authority: Frisk:** § 87(2)(g)). After conducting these frisks and speaking to the two men for approximately one minute, the officers left the incident area. Neither § 87(2)(b) nor the unidentified male were arrested or issued summonses.

§ 87(4-b), § 87(2)(g)

The investigation obtained a surveillance video that captured the entirety of this incident (**Board Review 01**).

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Derwent Williams stopped an individual.

Allegation B – Abuse of Authority: Police Officer Ahsan Zafar stopped § 87(2)(b)

Allegation C – Abuse of Authority: Sergeant Derwent Williams frisked an individual.

Allegation D – Abuse of Authority: Police Officer Ahsan Zafar frisked § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on March 2, 2018 (**Board Review 02**). Sergeant Williams was interviewed on May 18, 2018 (**Board Review 03**). Police Officer Zafar was interviewed on June 13, 2018 (**Board Review 04**).

It is undisputed that on the incident date, § 87(2)(b) was standing on the sidewalk outside of § 87(2)(b) when an unidentified man, using a cane and walking with a limp, approached him. This man spoke to § 87(2)(b) and both men made some sort of gesture towards their belts. Sergeant Williams and Police Officer Zafar then approached the two men.

In his sworn statement, § 87(2)(b) said that he was outside waiting for the mailman when he was approached by the unidentified man. This man then asked if § 87(2)(b) had an extra belt that he could have. § 87(2)(b) said no, and indicated his own belt by patting his hips with both of his hands stretched flat, so each palm patted flat against one of his hips. As § 87(2)(b) § 87(2)(b) patted his hips, Sergeant Williams and Police Officer Zafar approached him. At this

point, § 87(2)(b)'s hands were in his jacket pockets. Police Officer Zafar asked, "Can you take your hands out of your jacket?" § 87(2)(b) took both hands out of his jacket pockets and held them out in front of his torso with the palms exposed. He held his keys in his right hand where the officers could see them.

Police Officer Zafar then "grabbed" § 87(2)(b)'s left arm, patted it down, and then patted around § 87(2)(b)'s ribs and lower back. As he did this, Police Officer Zafar asked "Are you carrying anything on you? Don't lie to me." § 87(2)(b) said "Sir, I'm not holding anything out of the ordinary."

Police Officer Zafar spent approximately 12 to 15 seconds patting down § 87(2)(b)'s arm, ribs, lower back, and waistband area. As he was being patted down, § 87(2)(b) explained to Police Officer Zafar that he was outside waiting for the mailman. § 87(2)(b) also explained that the handicapped man had asked him for a belt. Police Officer Zafar asked § 87(2)(b) for his ID, and § 87(2)(b) showed it to him.

Police Officer Zafar said, "Don't lie to me, are you hiding anything in your underwear?" Police Officer Zafar then patted § 87(2)(b)'s groin area over the outside of § 87(2)(b)'s clothing for two to four seconds.

While Police Officer Zafar was frisking § 87(2)(b), Sergeant Williams started questioning the unidentified man and patting down his waist area. § 87(2)(b) was unable to further describe the frisk of the unidentified man. § 87(2)(b) overheard the other male tell Sergeant Williams that he had asked § 87(2)(b) for a belt.

Following the frisk, Police Officer Zafar asked § 87(2)(b) "Do you know why we're searching you?" § 87(2)(b) said no and Police Officer Zafar asked § 87(2)(b) why he was reaching towards his belt. § 87(2)(b) explained that he had been motioning towards his belt because the unidentified man had asked him for a belt. Police Officer Zafar replied that it "looked like a deal was going on." § 87(2)(b) reiterated that he was waiting for the mailman. At this point, the mailman was delivering to a house across Manida Street from the incident. § 87(2)(b) pointed out the mailman. Police Officer Zafar said "OK, fair enough," tapped § 87(2)(b) on the shoulder, and walked away with Sergeant Williams.

In her original complaint, § 87(2)(b) provided an account of this incident that was consistent with § 87(2)(b)'s sworn statement.

As the investigation could not identify or locate the second alleged victim in this complaint, he did not provide any statement.

In his statement, Police Officer Zafar said that the block between Spotford Avenue and Randall Avenue was known for narcotics sales, especially § 87(2)(b) which has received numerous complaints from the community. Last year, Police Officer Zafar executed a search warrant on a lot adjacent to the building, which was a hiding place for cocaine and pounds of marijuana. Police Officer Zafar also arrested an individual for a firearm near that area on an unspecified date and has arrested 10 to 20 individuals for narcotics sales in that general vicinity within the past three years.

On the incident date, Police Officer Zafar and Sergeant Williams were driving down Manida Street in an unmarked sedan. Police Officer Zafar observed two individuals on the side of the street from approximately one or two car lengths away. Both males were facing one another, but angled toward the street and approximately a foot or two away from each other. Police Officer Zafar did not recognize the males from any prior encounters or investigations.

§ 87(2)(b) appeared to adjust something in his waistband and give an object to the other man. Police Officer Zafar could not see the specific object and did not see anything in either

civilian's hand. Police Officer Zafar then observed the unidentified man adjust his waistband. Police Officer Zafar explained that for a narcotics observation, officers do not actually have to see narcotics. If the area is a drug prone location, and the movement is indicative of a drug transaction, that is enough to act. The action Police Officer Zafar observed indicated to him that it could be narcotics-related activity.

Police Officer Zafar and Sergeant Williams then stopped their vehicle, got out, and approached the individuals, who were approximately five to ten feet away. Police Officer Zafar did not remember making any other observations indicative of criminality before approaching the individuals. Police Officer Zafar did not observe anything on either male indicative of a narcotics transaction. Police Officer Zafar did not observe anything indicative of the presence of a weapon, but knowing the area, and knowing a gun was previously recovered in the area, believed that the suspected object being passed could have been a weapon. Police Officer Zafar did not remember observing any hard objects or bulges on either individual.

Police Officer Zafar was not sure whether he frisked or searched the males, but he believed he did one or the other. Police Officer Zafar was unable to describe the frisks or searches at all. Police Officer Zafar did not remember whether Sergeant Williams frisked either individual.

Police Officer Zafar explained to the men why they were stopped. The men understood and § 87(2)(b) explained that he took off his belt and gave it to the other civilian because he did not have a belt and had asked for one. Police Officer Zafar believed their story but did not remember why.

Police Officer Zafar told the males their story made sense and asked them for ID. Police Officer Zafar was not sure whether he got ID, but he got names from the individuals and said that was good enough. Police Officer Zafar later said he asked § 87(2)(b) for ID, but § 87(2)(b) asked whether he had to provide his information. Police Officer Zafar said it was up to him and § 87(2)(b) said he did not want to provide his information.

In his interview, Sergeant Williams described § 87(2)(b) in the Bronx as known for ongoing drug sales and "quality of life" issues. He was also aware of an attempted murder near this address on an unspecified date and stated that officers retrieved a gun and multiple pounds of marijuana from the area several months prior to the incident date.

Sergeant Williams initially denied having any recollection of this incident. When shown video of the incident, he identified himself and Police Officer Zafar. Sergeant Williams could not recall specifically why he approached the civilians, but recalled that he suspected them of being involved in a crime.

The investigation obtained security camera footage of this incident (**Board Review 01**).



201801532_20180716_1408_DM.mp4

At the start of the video § 87(2)(b) is standing up against the wall of § 87(2)(b) wearing a dark rain jacket with the hood up over his head. The unidentified male walks towards § 87(2)(b) and appears to speak to him. Both men gesture towards their hips or waists. The two men do not make physical contact and stand approximately two to three feet apart.

At approximately 0:28, the front passenger corner of the officers' vehicle comes into view in the bottom left corner of the video frame. Sergeant William and Police Officer Zafar get out of their vehicle and approach the two civilians. At approximately 0:43, Police Officer Zafar

pats down § 87(2)(b)'s waistband and groin. As he does so, § 87(2)(b) stands still with both of his hands open and visible. At the same time, Sergeant Williams pats down the unidentified man's upper back, left arm, waistband area, and legs.

Police officers may stop a civilian when they have an individualized, reasonable suspicion that the civilian is committing, has committed, or is about to commit a crime. Police officers may frisk a civilian when they have a reasonable suspicion that the civilian is armed. People v. De Bour 40 N.Y.2d 210 (1976) (**Board Review 05**). A potentially innocuous motion or behavior is, on its own, not enough to generate reasonable suspicion that a crime occurring. People v. Miller 504 N.Y.S.2d 407 (1986) (**Board Review 06**).

§ 87(2)(g)

§ 87(2)(g)

In People v. Miller, officers responded to an anonymous 911 report of a man with a gun at a specific address. Officers ended up stopping and frisking a suspect, and recovering a firearm from his person. The responding officers had specific physical descriptions of the allegedly armed man and his associates, but the court found that these descriptions did not match the suspect closely enough to justify any level of suspicion. The sole remaining factor in the defendant's stop and frisk was an officer's observation of the defendant putting his hand into his waistband. The officer suspected that the defendant was adjusting or hiding a firearm, but conceded in her testimony that this motion could have been related to the defendant simply tucking in his shirt. The court found that the defendant's potentially innocuous gesture, without any other relevant factors, was insufficient to support the reasonable suspicion that he was armed or committing a crime.

§ 87(2)(g)

§ 87(2)(g)
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Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (**Board Review 11**).
- This is § 87(2)(b)'s first CCRB complaint (**Board Review 12**).
- Sergeant Williams has been a member of service for 13 years and has been a subject in 11 cases and 31 allegations, of which two were substantiated § 87(4-b), § 87(2)(g)

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○ § 87(4-b), § 87(2)(g)
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- § 87(4-b), § 87(2)(g)
- CCRB case number 201404505 involved substantiated allegations of vehicle search and seizure of property against Sergeant Williams. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.
 - § 87(4-b), § 87(2)(g)
 - § 87(2)(g)
 - Police Officer Zafar has been a member of service for eight years and has been a subject in 12 cases and 31 allegations, of which four were substantiated § 87(4-b), § 87(2)(g)
 - CCRB case number 201307133 involved substantiated allegations of frisk, question, and vehicle search against Police Officer Zafar. The Board recommended Command Discipline B and Instructions and the NYPD imposed Command Discipline A and Instructions.
 - § 87(4-b), § 87(2)(g)
 - CCRB case number 201606695 involved a substantiated allegation of frisk against Police Officer Zafar § 87(4-b), § 87(2)(g). The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - § 87(2)(g) In addition to his four previous substantiated allegations, Police Officer Zafar has been the subject of two additional unsubstantiated stop and frisk allegations over two different cases.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Office, and the results will be added to the case file upon receipt.
- § 87(2)(b)
- § 87(2)(b)

Squad No.: 12

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date